

UNITED STATES BANKRUPTCY COURT
FOR THE WESTERN DISTRICT OF NORTH CAROLINA
ASHEVILLE DIVISION

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| IN RE: |) | |
| |) | |
| GEORGE B. HYLER, JR. |) | CASE NO.: 18-10267 |
| |) | Chapter 11 |
| Debtor |) | |
| _____ |) | |

**EX PARTE MOTION TO CONDUCT DISCOVERY UNDER RULE 2004 OF
THE FEDERAL RULES OF BANKRUPTCY PROCEDURE**

NOW COMES HomeTrust Bank ("HomeTrust"), through undersigned counsel, and moves the Court under Rule 2004 of the Federal Rules of Bankruptcy Procedure for an order authorizing HomeTrust to examine the 2004 Parties (as defined). To support the Motion, HomeTrust shows:

1. This Court has jurisdiction over the parties and the subject matter.
2. Debtor filed its voluntary Chapter 11 bankruptcy petition on June 25, 2018 ("Petition Date").
3. This case is pending in the Western District of North Carolina, no Trustee has been appointed, and no plan has been confirmed.
4. HomeTrust Bank is the Debtor's largest secured creditor and a party in interest in the bankruptcy case.
5. Debtor file a Disclosure Statement and Plan of Reorganization on October 23, 2018 [DE 41, 42]. In connection with approval of the Disclosure Statement, the Debtor provided HomeTrust with copies of the 2016 and 2017 tax returns of the Debtor and Hyler & Lopez, PA.
6. The Court has scheduled a confirmation hearing for January 22, 2019.

7. In reviewing the tax returns, HomeTrust has discovered matters it contends merit further investigation because it may lead to estate assets not disclosed by the Debtor that could satisfy creditor claims. It may also lead to information bearing on the Debtor's Plan of Reorganization.

8. HomeTrust desires to conduct discovery of the Debtor and these individuals or entities that may have information in their custody, possession, or control related to the Debtor's affairs and assets (the "2004 Parties"):

a. Chen Cube Properties, LLC – Chen Cube Properties, LLC is a North Carolina limited liability company ("Chen Cube"). The Debtor co-owned real property and improvements with James McDonald Jr. at 4 Regent Park Boulevard, Asheville, North Carolina. In 2016, they sold the property to Chen Cube for \$1,200,000.00. Upon information and belief, they received some of the purchase price at closing, the balance was financed and memorialized with a promissory note for \$800,000, and the debt was secured by a Deed of Trust from Chen Cube to the Debtor and the James McDonald Jr. Revocable Trust. The promissory note matured on January 6, 2018 and, upon information and belief, Chen Cube paid the balance of the purchase price to the Debtor and the James McDonald Jr. Revocable Trust. Chen Cube likely has information about the purchase of 4 Regent Park Boulevard, payments at closing in 2016, payments on the promissory note, and payments made at maturity.

b. James C. McDonald Jr. – Upon information and belief, James C. McDonald Jr. is a resident of Florida. He likely has information about the sale to Chen Cube and the relationship between him, the James McDonald Jr. Revocable Trust, and the Debtor.

c. Stephen Barnwell, Esq. – Stephen Barnwell, Esq. is a North Carolina attorney practicing in Asheville, North Carolina. Mr. Barnwell is the member-manager of Barnwell & Long, PLLC, Trustee under the Deed of Trust executed by Chen Cube. Upon information and belief, Mr. Barnwell also was the closing attorney for the sale of 4 Regent Park Boulevard to Chen Cube. Mr. Barnwell

also executed and recorded an Acknowledged Notice of Satisfaction by Trustee on February 5, 2018 to cancel the Deed of Trust. Mr. Barnwell likely has information about the purchase of 4 Regent Park Boulevard, payments and disbursements at closing in 2016, payments on the promissory note, and payments and disbursements at maturity.

d. Hyler & Lopez, PA – The Debtor owns 99% of Hyler & Lopez, PA (the "Firm"). The Firm is a member of Riverview & Iotla Street, LLC ("Riverview"). The Firm likely has information about its interest in Riverview, when acquired, its value (if any), and the operating or other agreements detailing how decisions are made by the Firm as to this interest.

e. Riverview & Iotla Street, LLC – Riverview is a North Carolina limited liability company formed in 2006 with a principal office at 81 West Main Street, Franklin, Macon County, North Carolina. Riverview likely has information about its assets and liabilities, the membership interest of the Firm, the value (if any) of that interest, and operating or other agreements of Riverview.

f. Theresa W. Hyler – Theresa W. Hyler ("Ms. Hyler") is the Debtor's wife. She is listed as a dependent in the Debtor's schedules and a homemaker in the tax returns. Ms. Hyler is a member of Toe River Ranch, LLC, a North Carolina limited liability company formed in 2006 with a principal office at 17 Stuyvesant Road, Asheville, North Carolina ("Toe River Ranch"). Toe River Ranch owns 56.97 acres of real property and improvements in Yancey County, North Carolina with a 2018 tax-assessed value of \$1,879,100.00. Upon information and belief, the property was acquired in 2014 and is unencumbered. Ms. Hyler likely has information about her membership interest in Toe River Ranch, including when she acquired her interest, for what amount (if any), and the source of funds used to acquire her interest.

Ms. Hyler is, upon information and belief, the sole holder of two accounts with RBC Capital Markets Corporation bearing account numbers -1235 and -5643. Ms. Hyler likely has information about the source of funds for these accounts.

Ms. Hyler and the Debtor sold real property and improvements at 1996 Hendersonville Road, Asheville, North Carolina to MIALH, LLC, a North Carolina limited liability company, by North Carolina General Warranty Deed recorded on February 9, 2017. The gross sale price was \$680,000.00. Ms. Hyler likely has information about the disposition of the sale proceeds.

g. Toe River Ranch, LLC -- Toe River Ranch likely has information about its assets and liabilities, the membership interest of Ms. Hyler and how it was acquired, the value (if any) of that interest, the involvement (if any) of the Debtor in Toe River Ranch, and operating or other agreements of Toe River Ranch.

h. RBC Capital Markets Corporation -- RBC Capital Markets Corporation likely has information about accounts -1235 and -5643, such as when they were opened, whether they are held solely by Ms. Hyler, the beneficiaries for the accounts, and monthly statements showing debits and credits to the accounts.

i. Goldsmith Molis & Gray, PLLC -- Goldsmith Molis & Gray, PLLC is an accounting firm that prepared the 2017 tax returns for the Debtor and the Firm. They likely have information about the matters described above and the Debtor's financial affairs, assets, and liabilities.

j. PB&J Innovations, LLC -- PB&J Innovations, LLC is a North Carolina limited liability company formed in 2014. The Debtor has a 15% membership interest in PB&J. PB&J may have information about its assets and liabilities, the membership interest of Debtor, the value (if any) of that interest, and operating or other agreements of PB&J.

k. Financial / Banking Institutions -- HomeTrust has knowledge of the above-mentioned accounts at RBC and Debtor accounts at TruPoint Bank. HomeTrust seeks blanket authority to conduct discovery from TruPoint and any other financial or banking institution that HomeTrust reasonably believes has information related to the matters described above and the Debtor's financial affairs, assets, and liabilities.

9. HomeTrust respectfully request the Court authorize it to examine the 2004 Parties under Bankruptcy Rule 2004 upon at least 14 days' notice and to issue document subpoenas under Bankruptcy Rule 9016.

WHEREFORE, HomeTrust respectfully requests that the Court enter an order under Bankruptcy Rule 2004 authorizing the relief requested and for such other relief as the Court deems just and proper.

This the 18th day of December, 2018.

/s/Lance P. Martin

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CERTIFICATE OF SERVICE

I certify that the foregoing EX PARTE MOTION TO CONDUCT DISCOVERY UNDER RULE 2004 OF THE FEDERAL RULES OF BANKRUPTCY PROCEDURE was filed electronically under the local rules and was therefore served electronically on those entities that have properly registered for such electronic service. Entities not registered for electronic service have been served by depositing a copy thereof in the United States mail, postage pre-paid:

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This the 18th day of December, 2018.

/s/Lance P. Martin
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